

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Albany, NY, Employer**

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**Docket No. 16-1425  
Issued: March 29, 2017**

*Appearances:*

*Paul H. Felser, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 28, 2016 appellant, through counsel, filed a timely appeal from a January 5, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish total disability beginning January 11, 2006 and continuing due to her accepted work injuries.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On May 12, 2007 appellant, then a 42-year-old bundle parcel sorter, filed an occupational disease claim (Form CA-2) alleging bilateral upper extremity conditions due to performing her repetitive work duties over time. She indicated that she first became aware of her claimed condition on August 21, 2004 and that she also first realized on that date that it was caused or aggravated by her employment.

Appellant stopped work on January 11, 2006.<sup>3</sup> On February 12, 2010 she filed a claim for compensation (Form CA-7) for the period January 11, 2006 to January 1, 2007 due to her accepted work injuries.<sup>4</sup>

In a report dated January 3, 2007, Dr. Mahender Goriganti, an attending Board-certified physical medicine/rehabilitation physician and osteopath, noted that he had been treating appellant for multiple work-related conditions of her upper extremities. He indicated that appellant was able to work part time for about four hours. Dr. Goriganti noted that appellant was disabled for four complete days and then subsequently returned in a limited-duty capacity for four hours a day with significant limitations of repetitive work and limitations as to the weights that she could handle.

In a February 28, 2007 report, Dr. Goriganti diagnosed lateral epicondylitis in both elbows and cubital tunnel syndrome of the left elbow. He noted that, due to her injuries, appellant was capable of moderate-duty work only. Dr. Goriganti opined that occasional lifting and carrying of up to 10 pounds was acceptable, but that repetitive motions of the wrists and hands should be avoided. Appellant could work five to seven days per week for four to six hours per day.

On April 26, 2007 Dr. Goriganti discussed appellant's factual and medical history. He noted that appellant had reported that her limited-duty position expired effective January 11, 2006. In reports dated August 31, 2007, October 31, 2008, and November 12, 2009, Dr. Goriganti indicated that appellant had left shoulder impingement syndrome, bilateral lateral epicondylitis, and bilateral carpal tunnel syndrome due to performing her repetitive work duties.

OWCP accepted appellant's claim for aggravation of right lateral epicondylitis, right elbow strain, and left lateral epicondylitis.

Dr. Goriganti produced numerous disability certificates, dated between February 23, 2006 and October 17, 2012, in which he found that appellant could perform light-duty work. He opined that appellant could occasionally engage in lifting and carrying, but that she could not

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<sup>3</sup> When she stopped work, appellant was working in a limited-duty job due to a prior accepted injury. The job did not require repetitive motion of her neck or arms. Under a separate File No. xxxxxx599, OWCP accepted that on August 21, 2004 appellant sustained a right elbow strain when her right arm was struck by a catalogue. Appellant did not receive any disability compensation due to the August 21, 2004 injury. This file number has been doubled into the current file number.

<sup>4</sup> Appellant filed numerous CA-7 forms through 2014 claiming that she continued to have disability due to her accepted work injuries after January 1, 2007.

engage in repetitious work related to her neck and upper extremities. In duty status reports (Form CA-17) dated June 20, 2011 and October 17, 2012, Dr. Goriganti indicated that appellant should avoid repetitious work due to her bilateral epicondylitis, shoulder pain, and forearm pain.

By decision dated October 7, 2013, OWCP denied appellant's claim for disability finding that she had not submitted sufficient evidence to establish total disability beginning January 11, 2006 and continuing due to her accepted work injuries.

Appellant requested a telephonic hearing with an OWCP hearing representative which was held on April 9, 2014. In a decision dated June 5, 2014, OWCP's hearing representative set aside the October 7, 2013 decision and remanded the case for an examination by an OWCP referral physician, to be followed by the issuance of a *de novo* decision.

On remand OWCP referred appellant to Dr. Gregory Shankman, a Board-certified orthopedic surgeon, for an examination and opinion on her work-related disability. In his July 22, 2014 report, Dr. Shankman discussed appellant's factual and medical history and provided results on physical examination. He indicated that appellant exhibited normal movement in all planes of both her elbows. Appellant had intact radial, median, and ulnar nerve function and good strength in the muscle groups of both upper extremities. Dr. Shankman reported that appellant had good grip strength in both hands and that there was no motor or sensory deficit in either upper extremity. Appellant exhibited no tenderness in any of the epicondyles and there was no swelling/effusion or medial/lateral instability in the elbows. Dr. Shankman opined that there was no objective evidence that appellant was disabled during the time period from 2006 to the present due to the accepted work injuries. He pointed out that appellant had very mild epicondylitis in both elbows, but that her condition did not support any degree of disability from 2006 to the present. In an attached July 22, 2014 work restrictions form, Dr. Shankman indicated that appellant could perform her usual job.

In an October 8, 2014 decision, OWCP denied appellant's claim for work-related total disability beginning January 11, 2006 and continuing. It found that appellant had failed to submit sufficient medical evidence to support her disability claim and that the opinion of Dr. Shankman established no work-related disability from 2006 to the present.

In an October 7, 2015 letter received on that date, appellant, through counsel, requested reconsideration of OWCP's October 8, 2014 decision denying her disability claim. Counsel argued that the reports of Dr. Goriganti established appellant's claim for work-related total disability beginning January 11, 2006 and continuing. He also asserted that appellant sustained disability because her limited-duty job was withdrawn effective January 11, 2006.

By decision dated January 5, 2016, OWCP denied modification of its October 8, 2014 decision denying appellant's claim for work-related total disability beginning January 11, 2006 and continuing.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an "employee of the

United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury.<sup>6</sup> This meaning, for brevity, is expressed as disability for work.<sup>7</sup>

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup>

### ANALYSIS

OWCP accepted appellant’s occupational disease claim for aggravation of right lateral epicondylitis, right elbow strain, and left lateral epicondylitis. Appellant stopped work on January 11, 2006<sup>9</sup> and filed CA-7 forms claiming compensation from January 11, 2006 and continuing due to these accepted work conditions. She claimed that her limited position had been withdrawn.

The Board finds that appellant failed to meet her burden of proof to establish total disability beginning January 11, 2006 and continuing.

In the report dated January 3, 2007, Dr. Goriganti noted that he had been treating appellant for multiple work-related conditions of her upper extremities and that appellant was able to work part time for about four hours. He noted that she was disabled for four complete days and then subsequently returned on a limited-duty capacity for four hours a day with significant limitations of repetitive work and limitations as to the weights that she could handle. In his February 28, 2007 report, Dr. Goriganti diagnosed lateral epicondylitis in both elbows and cubital tunnel syndrome of the left elbow. He opined that occasional lifting and carrying of up to 10 pounds was acceptable, but that repetitive motions of the wrists and hands should be avoided.<sup>10</sup>

The Board finds that these reports did not establish total disability beginning on or after January 11, 2006. Dr. Goriganti failed to provide medical rationale in support of his opinions on

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<sup>5</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>6</sup> *See* 20 C.F.R. § 10.5(f).

<sup>7</sup> *Roberta L. Kaaumoana*, 54 ECAB 150 (2002); *see also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

<sup>8</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>9</sup> *See supra* note 3.

<sup>10</sup> Dr. Goriganti indicated that appellant could work five to seven days per week for four to six hours per day.

disability and his reports do not clearly show that appellant was totally disabled on or after January 11, 2006 due to the accepted work injuries -- aggravation of right lateral epicondylitis, right elbow strain, and left lateral epicondylitis. He did not present objective findings on examination or diagnostic testing to establish work-related disability. The Board notes that Dr. Goriganti discussed a medical condition that has not been accepted as work related, *i.e.*, cubital tunnel syndrome of the left elbow,<sup>11</sup> and it remains unclear if his finding of partial disability was due to this or some other nonwork-related condition. The Board has held that a medical report is of limited probative value if it contains an opinion on a medical matter which is unsupported by medical rationale.<sup>12</sup>

In reports dated August 31, 2007, October 31, 2008, and November 12, 2009, Dr. Goriganti indicated that appellant had left shoulder impingement syndrome, and bilateral lateral epicondylitis, and bilateral carpal tunnel syndrome due to performing repetitive work duties. The Board notes that these reports do not contain any opinion on disability and refer to two conditions that have not been accepted as work related. The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's condition/disability is of limited probative value on the issue of causal relationship.<sup>13</sup> Dr. Goriganti produced numerous disability certificates, dated between February 23, 2006 and October 17, 2012, in which he indicated that appellant could perform light-duty work. He opined that appellant could occasionally engage in lifting and carrying, but that she could not engage in repetitious work related to her neck and upper extremities. In CA-17 forms dated June 20, 2011 and October 17, 2012, Dr. Goriganti indicated that appellant should avoid repetitious work due to her bilateral epicondylitis, shoulder pain, and forearm pain. However, the Board notes that none of these brief reports, which are unsupported by objective findings, shows that appellant was disabled beginning January 11, 2006 due to her accepted work injuries.

On the contrary, the medical evidence reflecting that appellant was not disabled beginning January 11, 2006 due to her accepted work injuries. In a July 22, 2014 report, Dr. Shankman, OWCP's referral physician, discussed appellant's factual and medical history and detailed the findings of the physical examination. He indicated that appellant exhibited normal movement in all planes of both her elbows and reported other normal findings regarding her upper extremities. Dr. Shankman opined that there was no objective evidence that appellant was disabled during the time period from 2006 to the present due to the accepted work injuries. He pointed out that appellant had very mild epicondylitis in both elbows, but that her condition did not support any degree of disability from 2006 to the present. In an attached July 22, 2014 work restrictions form, Dr. Shankman indicated that appellant could perform her usual job.

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<sup>11</sup> For injuries or conditions not accepted by OWCP, appellant has the burden of proof to establish causal relationship. *See Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>12</sup> *C.M.*, Docket No. 14-88 (issued April 18, 2014).

<sup>13</sup> *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

On appeal counsel asserts that “factual and medical evidence was not fully considered and addressed by [OWCP] in the decision.” However, he did not identify the factual and medical evidence to which he referred.<sup>14</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish total disability beginning January 11, 2006 and continuing due to her accepted work injuries.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 2016 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: March 29, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees’ Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees’ Compensation Appeals Board

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<sup>14</sup> Counsel also asserted that appellant sustained disability because her limited-duty job was withdrawn effective January 11, 2006. In some cases, disability occurs when a limited-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn. *See* 20 C.F.R. § 10.5(x). However, counsel did not present evidence showing that appellant’s limited-duty job was withdrawn as alleged.